THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No. 22206 of 1997

DATED: 07-07-2006

Between:

B. Bugagurappa (died) and others.

..Petitioners.

and

The Municipal Commissioner, Ananthapur Municipality,
Ananthapur Town and District and others.

..Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.22206 of 1997

ORDER:

Heard both the counsel.

2. During the pendency of the writ petition, the writ petitioner died and his legal representatives were brought on record. At present, the legal representatives are prosecuting the present litigation.

3. This writ petition is filed for a writ of mandamus declaring the action of the respondents in taking steps to lay a road through the land admeasuring Ac:1-06 cents in Sy.No.180/3 of Anantapur Town belonging to the petitioner without payment of any compensation under the Land Acquisition Act or providing alternative sites for the value of the loss to be suffered by the petitioner as illegal, arbitrary, unjustified and without jurisdiction and pass such other suitable orders.

4. It is stated in the affidavit filed in support of the writ petition that the property of an extent of Ac:1-06 cents in Sy.No.180/3 of Ananthapur Town is the ancestral property of the petitioner and he had inherited the same through his father. All the revenue records

contain his name and title to the property and he has been in possession and enjoyment of the said land. The Mandal Revenue Officer also issued pattadar pass book bearing No.236 and the land title document under the provisions of Record of Rights Act on 21-08-1995. The said land is classified as wet land. It is further stated that as far as the aforesaid land and some adjacent lands are concerned, there were proposals from the Anantapur Municipality proposing to lay 80 feet wide road leading to APSRTC bus stand from Gooty road. Consequently, it was estimated that an extent of Ac:0-27 cents would be acquired by the respondents for laying the road through the said lands. It is also stated that even though the proposals are pending for laying the road through the said lands, the respondents did not initiate any proceedings under the provisions of the Land Acquisition Act. However, they were promising from the beginning that alternative lands will be provided to them to the extent of dispossession in the said survey number. It is further stated that they have been insisting for alternative lands proposed to be given. Even though talks and negotiations are going on for the last 10 years, nothing had materialized so far. The respondents are proposing to give alternative sites situated at a distant place and that too in different survey numbers. The petitioner also had specified several other details in paras 4 and 5 of the affidavit filed in support of the writ petition. The main grievance of the writ petitioner is that without initiating the land acquisition proceedings and without considering the request for providing alternative lands, the respondents are trying to further proceed with the proposed activity.

5. The first respondent filed counter-affidavit, wherein at para

3 it was pleaded as under;

" It is a fact that there is a proposal to have 80' wide road leading to APSRTC bus stand from Gooty road as per the sanctioned master plan of Ananthapur. As per Section 184(2) of Andhra Pradesh Municipalities Act, 1965 (for short 'the Act) the owner of any land shall before he utilizes, sells, leases or otherwise disposes of such land or any part thereof as house site-

(a) make a layout and form streets or roads giving access to sites connecting them with an existing public or private street.

(b) Set-apart in the layout adequate area of land on such a scale as may be prescribed for a play ground a park, an educational institution or for any other public purpose.

As per rule 8 of the layout Rules, 1970 (issued in G.O.Ms.No.62 MA, dated 28-01-1970), the width of the roads and streets in the layout shall conform to the minimum requirements and subject to the provisions of G.T.P. scheme (General Town Planning) or detailed Town Planning Scheme or both or the Master Plan (irrespective of percentage). Further, as per regulation No.5 of Zoning Regulations of the G.T.P. Scheme of Ananthapur as sanctioned in G.O.Ms.No.1122 MA, dated 13-10-1981 it is the duty of the land owner to form the proposed road as shown in the G.T.P.scheme i.e., Master Plan".

Further, it was pleaded at para 4 of the counter-affidavit that the proposed 80' wide master plan road is the only access to the petitioner's site and under the provisions of the Act as explained

supra, the petitioner ought to apply for approval of lay out before utilizing his site as house site and should handover the 80'wide road in question to the Municipality free of cost. Hence, the land acquisition does not arise in this case. It is also stated that it is not true that the Municipality, Ananthapur is mobilizing the raw material such as gravel near the land of the petitioner. In para 7 of the counter-affidavit, it was stated that it is not true that the respondents have taken similar lands belonging to some other persons and have already provided them with alternative sites belonging to the Municipality. Instead of applying for approval of lay out for his land said to be measuring Ac:1-06 cents as required under Sections 184 and 188 of the Act, the petitioner is wasting his energy by filing this writ petition.

6. In the light of the stand taken by the first respondent in the counter-affidavit, the ownership of the petitioner to the property in question is not in controversy. It is needless to say that when the Municipality intentionally further proceeded with the activity either taking his property for the purpose of the road or otherwise, the procedure as contemplated by the law to be followed. It is needless to say that in the alternative, the respondents also may consider the request of the petitioner for providing an alternative site, if possible. In any event, the stand taken in the counter-affidavit, prima facie, appears to be unreasonable stand. In the facts and circumstances of the case, this Court is of the considered opinion that the writ petition can be disposed of with the following directions;

The respondents to follow the due process of law before taking up any further action in relation to the subject matter of the

writ petition or even in the alternative, to consider the request made by the petitioner for providing alternative sites, if possible, in accordance with law.

7. With the above directions, the Writ Petition is disposed of. No order as to costs.

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P.S.NARAYANA,J

Dated:07-07-2006

sj